IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 6742 of 2004

For Approval and Signature:

HON'BLE MR.JUSTICE R.P.DHOLAKIA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

MUKESHBHAI VIRJIBHAI RATHWA

Versus

DISTRICT MAGISTRATE

Appearance:

1. Special Civil Application No. 6742 of 2004

MR SK PATEL for Petitioner No. 1

MR RC KODEKAR AGP for Respondent No. 1-3

RULE SERVED for Respondent No. 1-3

CORAM : HON'BLE MR.JUSTICE R.P.DHOLAKIA

Date of decision: 14/09/2004

ORAL JUDGEMENT

The petitioner has been detained under the provisions of Gujarat Prevention of Anti-Social

Activities Act, 1985 (hereinafter referred to as " the Act of 1985") by the order dated 16-3-2004 passed by the District Magistrate, Vadodara, and he has been declared as bootlegger.

2. It is now well settled that unless the activities of a person as bootlegger has disturbed the maintenance of public order, he cannot be detained under the Act. Reliance is placed on a decision of the case of Piyush Kantilal Mehta vs. Commissioner of Police, Ahmedabad & Ors. reported in AIR 1989 SC 491.

3. Learned counsel for the petitioner has argued that the last offence which has been taken into consideration by the detaining authority is of 23-12-2003 and the order of detention has been passed by the authority on 16-3-2004. Therefore, there is a delay of 2 months and 24 days in passing the order of detention, and therefore, the petitioner is required to be set at liberty forthwith. In support of the contention, learned counsel for the petitioner has placed reliance on a decision of the case of Elesh Nandubhai Patel v. Commissioner of Police, Ahmedabad city and others, reported in 1997 G.L.H. (1) 381 wherein it is held as under :

> " In the instant case, the last registered case is of May 20, 1996. The petitioner detenu was granted anticipatory bail by the competent Court. He was also granted regular bail subsequently. The impugned order of detention has been passed on November 05, 1996, i.e. after a delay of 5 months and 15 days.It is of course true that the detaining authority has relied on two incidents of 2nd October and 10th October 1996, both unregistered cases. I have gone through the allegations. I fail to understand if the allegations are really of such a grievous nature, why the cases have not been registered against the petitioner. There appears to be some substance in the contention of the petitioner that these two unregistered cases have been referred only with a view to cover up the gap or to give life to a stale case. This unexplained delay makes a ground of detention not proximate, vitiating the order of detention itself. If I am to buttress my findings, I would say the reference may be made to the decision of the Supreme Court in Anand Prakash v. State of U.P. reported in AIR 1990 SC 516 and Pradeep Nilkanth v. S.Ramamurthy reported in 1993

(2)Suppli. SCC 61."

4. The petition is opposed to by learned A.P.P. Mr. R.C.Kodekar.

5. Considering rival side contentions, it appears that the offence which has been taken into consideration by the authority is of 23-12-2003 and the order of detention has been passed on 16-3-2004 i.e. after a delay of 2 months and 24 days, but the same is not permitted in view of the decision rendered by this Court reported in 1997 (1) G.L.H. 381 (Supra). So the point raised by the petitioner is fully covered by the decision reported in 1997 (1) G.L.H. 381, and therefore, the petitioner is able to succeed only on that point. Therefore, learned counsel for the petitioner has restricted his arguments only on that point and not pressed other points.

6. In view of the aforesaid, the petition is allowed. The impugned order of detention dated 16-3-2004 passed against the detenu is quashed and set aside. The detenu, Mukeshbhai Virjibhai Rathwa is ordered to be set at liberty forthwith, if not required in connection with any other case. Rule is made absolute. D.S. permitted.

(R.P.Dholakia, J.)

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